

in, or training for, competitive employment in an integrated setting in the labor market;

(b) Makes maximum effort, including the identification of vocational rehabilitation services, reasonable accommodations, and other support services, to enable the eligible individual to benefit from training in, or to be placed in employment in, an integrated setting; and

(c) Provides services designed to promote movement from extended employment to integrated employment, including supported employment, independent living, and community participation.

(Authority: Sec. 101(a)(16) of the Act; 29 U.S.C. 721(a)(16))

§ 361.56 Individuals determined to have achieved an employment outcome.

The State plan must assure that an individual is determined to have achieved an employment outcome only if the following requirements are met:

(a) The provision of services under the individual's IWRP has contributed to the achievement of the employment outcome.

(b) The employment outcome is consistent with the individual's strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.

(c) The employment outcome is in the most integrated setting possible, consistent with the individual's informed choice.

(d) The individual has maintained the employment outcome for a period of at least 90 days.

(e) At the end of the appropriate period under paragraph (d) of this section, the individual and the rehabilitation counselor or coordinator consider the employment outcome to be satisfactory and agree that the individual is performing well on the job.

(Authority: Secs. 12(c), 101(a)(6), and 106(a)(2) of the Act; 29 U.S.C. 711(c), 721(a)(6), and 726(a)(2))

§ 361.57 Review of rehabilitation counselor or coordinator determinations.

The State plan must contain procedures, including standards of review

under paragraph (b)(7) of this section, established by the director of the designated State unit to ensure that any applicant or eligible individual who is dissatisfied with any determinations made by a rehabilitation counselor or coordinator concerning the furnishing or denial of services may request, or, if appropriate, may request through the individual's representative, a timely review of those determinations. The procedures established by the director of the State unit must be in accordance with the following provisions:

(a) *Informal resolution.* The State unit may establish an informal process to resolve a request for review without conducting a formal hearing. However, a State's informal process must be conducted and concluded within the time period established under paragraph (b)(1) of this section for holding a formal hearing. If informal resolution is not successful, a formal hearing must be conducted by the end of this same period, unless the parties agree to a specific extension of time.

(b) *Formal hearing procedures.* Except as provided in paragraph (d) of this section, the State unit shall establish formal review procedures that provide that—

(1) A hearing by an impartial hearing officer, selected in accordance with paragraph (c) of this section, must be held within 45 days of an individual's request for review, unless informal resolution is achieved prior to the 45th day or the parties agree to a specific extension of time;

(2) The State unit may not institute a suspension, reduction, or termination of services being provided under an IWRP pending a final determination of the formal hearing under this paragraph or informal resolution under paragraph (a) of this section, unless the individual or, in an appropriate case, the individual's representative so requests or the agency has evidence that the services have been obtained through misrepresentation, fraud, collusion, or criminal conduct on the part of the individual;

(3) The individual or, if appropriate, the individual's representative must be afforded an opportunity to present additional evidence, information, and

witnesses to the impartial hearing officer, to be represented by counsel or other appropriate advocate, and to examine all witnesses and other relevant sources of information and evidence;

(4) The impartial hearing officer shall make a decision based on the provisions of the approved State plan, the Act, Federal vocational rehabilitation regulations, and State regulations and policies that are consistent with Federal requirements and shall provide to the individual or, if appropriate, the individual's representative and to the director of the designated State unit a full written report of the findings and grounds for the decision within 30 days of the completion of the hearing;

(5) If the director of the designated State unit decides to review the decision of the impartial hearing officer, the director shall notify in writing the individual or, if appropriate, the individual's representative of that intent within 20 days of the mailing of the impartial hearing officer's decision;

(6) If the director of the designated State unit fails to provide the notice required by paragraph (b)(5) of this section, the impartial hearing officer's decision becomes a final decision;

(7) The decision of the director of the designated State unit to review any impartial hearing officer's decision must be based on standards of review contained in written State unit policy;

(8) If the director of the designated State unit decides to review the decision of the impartial hearing officer, the director shall provide the individual or, if appropriate, the individual's representative an opportunity to submit additional evidence and information relevant to the final decision;

(9) The director may not overturn or modify a decision, or part of a decision, of an impartial hearing officer that supports the position of the individual unless the director concludes, based on clear and convincing evidence, that the decision of the impartial hearing officer is clearly erroneous because it is contrary to the approved State plan, the Act, Federal vocational rehabilitation regulations, or State regulations or policies that are consistent with Federal requirements;

(10) Within 30 days of providing notice of intent to review the impartial

hearing officer's decision, the director of the designated State unit shall make a final decision and provide a full report in writing of the decision, including the findings and the statutory, regulatory, or policy grounds for the decision, to the individual or, if appropriate, the individual's representative;

(11) The director of the designated State unit may not delegate responsibility to make any final decision to any other officer or employee of the designated State unit; and

(12) Except for the time limitations established in paragraphs (b)(1) and (b)(5) of this section, each State's review procedures may provide for reasonable time extensions for good cause shown at the request of a party or at the request of both parties.

(c) *Selection of impartial hearing officers.* Except as provided in paragraph (d) of this section, the impartial hearing officer for a particular case must be selected—

(1) From among the pool of persons qualified to be an impartial hearing officer, as defined in § 361.5(b)(22), who are identified by the State unit, if the State unit is an independent commission, or jointly by the designated State unit and those members of the State Rehabilitation Advisory Council designated in section 102(d)(2)(C) of the Act, if the State has a Council; and

(2)(i) On a random basis; or

(ii) By agreement between the director of the designated State unit and the individual or, if appropriate, the individual's representative.

(d) *State fair hearing board.* The provisions of paragraphs (b) and (c) of this section are not applicable if the State has a fair hearing board that was established before January 1, 1985, that is authorized under State law to review rehabilitation counselor or coordinator determinations and to carry out the responsibilities of the director of the designated State unit under this section.

(e) *Informing affected individuals.* The State unit shall inform, through appropriate modes of communication, all applicants and eligible individuals of—

(1) Their right to review under this section, including the names and addresses of individuals with whom appeals may be filed; and

(2) The manner in which an impartial hearing officer will be selected consistent with the requirements of paragraph (c) of this section.

(f) *Data collection.* The director of the designated State unit shall collect and submit, at a minimum, the following data to the Secretary for inclusion each year in the annual report to Congress under section 13 of the Act:

(1) The number of appeals to impartial hearing officers and the State director, including the type of complaints and the issues involved.

(2) The number of decisions by the State director reversing in whole or in part a decision of the impartial hearing officer.

(3) The number of decisions affirming the position of the dissatisfied individual assisted through the client assistance program, when that assistance is known to the State unit.

(Approved by the Office of Management and Budget under control number 1820–0500)

(Authority: Secs. 102(b) and 102(d) of the Act; 29 U.S.C. 722(b) and 722(d))

Subpart C—Financing of State Vocational Rehabilitation Programs

§ 361.60 Matching requirements.

(a) *Federal share*—(1) *General.* Except as provided in paragraphs (a)(2) and (a)(3) of this section, the Federal share for expenditures made by the State unit under the State plan, including expenditures for the provision of vocational rehabilitation services, administration of the State plan, and the development and implementation of the strategic plan, is 78.7 percent.

(2) *Construction projects.* The Federal share for expenditures made for the construction of a facility for community rehabilitation program purposes may not be more than 50 percent of the total cost of the project.

(3) *Innovation and expansion grant activities.* The Federal share for the cost of innovation and expansion grant activities funded by appropriations under part C of title I of the Act is 90 percent.

(b) *Non-Federal share*—(1) *General.* Except as provided in paragraphs (b)(2) and (b)(3) of this section, expenditures made under the State plan to meet the

non-Federal share under this section must be consistent with the provisions of 34 CFR 80.24.

(2) *Third party in-kind contributions.* Third party in-kind contributions specified in 34 CFR 80.24(a)(2) may not be used to meet the non-Federal share under this section.

(3) *Contributions by private entities.* Expenditures made from contributions by private organizations, agencies, or individuals that are deposited in the account of the State agency or sole local agency in accordance with State law and that are earmarked, under a condition imposed by the contributor, may be used as part of the non-Federal share under this section if the following requirements are met:

(i) The funds are earmarked for meeting in whole or in part the State's share for establishing a community rehabilitation program or constructing a particular facility for community rehabilitation program purposes.

(ii) If the funds are earmarked for any other purpose under the State plan, the expenditures do not benefit in any way the donor, an individual to whom the donor is related by blood or marriage or with whom the donor has a close personal relationship, or an individual, entity, or organization with whom the donor shares a financial interest. The Secretary does not consider a donor's receipt from the State unit of a grant, subgrant, or contract with funds allotted under this part to be a benefit for the purposes of this paragraph if the grant, subgrant, or contract is awarded under the State's regular competitive procedures.

(Authority: Secs. 7(7), 101(a)(3), and 104 of the Act; 29 U.S.C. 706(7), 721(a)(3) and 724)

NOTE: The Secretary notes that contributions may be earmarked in accordance with paragraph (b)(3)(ii) of this section for providing particular services (e.g., rehabilitation technology services); serving individuals with certain types of disabilities (e.g., individuals who are blind), consistent with the State's order of selection, if applicable; providing services to special groups that State or Federal law permits to be targeted for services (e.g., students with disabilities who are receiving special education services), consistent with the State's order of selection, if applicable; or carrying out particular types of administrative activities permissible under State law. Contributions